

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

---

In the Matter of the Complaints	)	SUMMARY OF FACTS
Against Kim Young	)	AND
And Jackie Ladner	)	STATEMENT OF FINDINGS

---

Mike Hutchin filed separate complaints against Kim Young and Jackie Ladner, employees of the Lake County Appraisal Office. The complaints are based on very similar assertions, alleging that both employees violated Montana Code Annotated § 13-35-226(4).

SUMMARY OF FACTS

1. The Lake County Appraisal Office (Appraisal Office) is a field office of the Montana Department of Revenue. At the time of the complaints, Kim Young and Jackie Ladner were employees of the Appraisal Office in Polson, Montana; and, therefore, Young and Ladner were state employees. Young still is employed by the Appraisal Office. Ladner retired in December, 2002.

2. During 2002, Young was Chairman of the Lake County Democratic Central Committee. During the last two years of her employment with the Appraisal Office, Ladner served as Vice-Chair of the Lake County Democratic Central Committee.

3. Mike Hutchin is a Lake County Commissioner.

4. Young, Ladner, and Hutchin all worked in offices on the second floor of the Lake County Courthouse. Hutchin's office is on the south side of the courthouse building, and Young's and Ladner's office was on the north side of the building. Several hallways and the second floor main lobby of the courthouse separate the two offices.

5. Hutchin contends he personally observed Young and Ladner in “numerous lengthy discussions . . . with citizens of the Democrat [sic] Party . . . during working hours at the Lake County Courthouse.” He also claims Young and Ladner engaged in political discussions with each other and with: former Democratic candidate for State Representative Jack Guns; Mike Roberts, a contractor; and Jeanne Windham, a Democratic candidate for Lake County Commissioner in 2002. Hutchin also alleges Young made “numerous phone calls from his office phone to the Chairman of the Lake County Republican Party, Josh King,” to organize a candidate forum.

6. Hutchin contends the activities of Young and Ladner constitute violations of Montana Code Annotated § 13-35-226(4), that establishes certain restrictions on political activities of public employees “while on the job or at the place of employment.”

7. The following people were identified by Hutchin and others as potential witnesses for the claims made in Hutchin’s complaint: Lynn Fricker, Josh King, Carol McLure, Carla Buys, Theresa Kjvorstad, Larry Richards, Jody Richards, Sandy Weaver, Patti Kugler, Lori Kelly, and Patricia Cook. All of these people were contacted and interviewed during the investigation of this matter. In addition, Hutchin, Young, Ladner, Jack Guns, Mike Roberts, Jeanne Windham, and Joey Jayne were interviewed.

8. Hutchin stated he witnessed conversations between: 1) Young and Ladner; 2) Young, Ladner, and various Democratic candidates for public office; and 3) Young, Ladner, and non-candidates. He witnessed conversations while the participants were seated on a bench outside Young’s and Ladner’s office. He observed conversations while walking past the bench or walking to the restroom, and he stated all conversations took place during working hours. He contends “there was no question they were

soliciting support,” but he was not able to recall the specific details of any of the conversations he overheard. Hutchin never witnessed Young or Ladner passing out campaign literature or materials in the courthouse or during working hours, or engaging in any political campaign activities while at work.

9. Young submitted a written response to the complaint. He also was interviewed during the investigation of the complaint. He stated while on the job he never attempted to solicit support for or opposition to candidates, did not attempt to influence anyone’s vote in any political races or campaigns, and did not distribute campaign materials. He stated he sometimes engaged in conversations with citizens who came into the office to discuss tax and appraisal issues. Conversations may have occasionally involved politics, but Young insists he never engaged in any discussions that could be construed as a violation of Montana Code Annotated § 13-35-226.

10. Young stated he is entitled to two 20-minute breaks, one in the morning and one in the afternoon. He typically does not take a regular break, but if an acquaintance or citizen wants to engage him in a conversation he will move out into the hallway to talk. He does not consider himself to be on “work” time during these conversations. Rather, he feels he is on an official break from work and he can discuss whatever he likes, since the conversations do not occur in his office. He reiterated, however, that he has never engaged in discussions at work that could be interpreted as a violation of Montana Code Annotated § 13-35-226.

11. Young admits that he had conversations with his co-worker, Ladner, concerning local, national, or international events, including political matters; however,

he adamantly denies he and Ladner spent time during work hours discussing party politics, or that they conducted political business out of their offices.

12. Ladner submitted a written response to the complaint. She also was interviewed during the investigation of the complaint. Like Young, she admits she probably had some discussions with others, including Young, regarding political matters, but denies she engaged in campaigning, solicitation, or attempting to persuade others regarding her political views or candidate preferences. She states she never distributed political literature while working at the courthouse or engaged in any other activities that could be construed as a violation of Montana Code Annotated § 13-35-226.

13. Patricia Cook is the Lake County Treasurer. Cook sent a letter to the office of the Commissioner of Political Practices (Commissioner) stating she personally observed both Young and Ladner engaged in conversations with Jeanne Windham (a Democratic candidate for Lake County Commissioner), Mike Roberts (a Democrat who was hoping to become a candidate for county commissioner), and Joey Jayne, Democratic House District 73 State Representative. In her letter, Cook contends she observed Young and Ladner in “lengthy conversations” with these individuals. When interviewed during the investigation of this complaint, Cook admitted she did not hear the content of the conversations (with the exception of the conversation she describes in Fact 14, below).

14. Cook recalled the content of one conversation between Ladner and Mike Roberts. According to her letter to the Commissioner, Cook overheard Ladner telling Roberts he would need to check with Young after he (Young) returned from vacation,

regarding “getting the appointment for Democrat [sic] candidate for commissioner.” Cook’s letter states that the conversation occurred in the courthouse hallway around 8:15 one morning.

15. Pat Erickson was the Democratic candidate for Lake County Commissioner in the June, 2002, primary election. After he was notified he was not eligible to serve as county commissioner because he did not live in Lake County Commission District 1, Erickson withdrew from the race several days after the primary election. The Lake County Attorney, the Lake County Election Administrator, and the Secretary of State’s office had several discussions regarding the procedure for appointment of a replacement Democratic candidate. Ultimately the Secretary of State’s office determined it had no oversight or enforcement authority in local elections, and it would not become involved in the decision regarding the selection of the replacement candidate for Erickson.

16. Mike Roberts, a Lake County contractor, had hoped to become the replacement Democratic candidate for Lake County Commissioner in 2002 after Erickson withdrew from the race. In response to Cook’s claim regarding the alleged 8:15 a.m. conversation between Roberts and Ladner (Fact 14), Roberts stated he does not believe he would have been in the courthouse that early in the day. He stated he had written letters to the editor regarding the county commissioner race, and he may have given a copy of one letter to Ladner while she was on her lunch break. He also recalled giving Ladner a copy of a letter he had written to Secretary of State Bob Brown and Attorney General Mike McGrath, regarding appointment of a candidate to replace

Erickson. Roberts stated Ladner did not read the letter during the brief time they met, but he may have summarized the content of the letter for Ladner.

17. On June 12, 2002, Roberts sent a letter to Secretary of State Bob Brown, with a copy to Attorney General Mike McGrath, stating that he would be “honored” to be appointed as the Democratic candidate who replaced Erickson.

18. Ladner does not recall the alleged conversation with Roberts and does not recall Roberts handing her a copy of a letter, as Roberts described. She stated she does not recall ever talking with Mike Roberts, and she stated, in any event, she would never use the word “appointment” in the manner described by Cook. Ladner stated she normally arrived at the courthouse around 8:00 a.m., turned on her computer, and started a pot of coffee, which would leave little time for engaging in a discussion with someone at 8:15 in the morning.

19. Jeanne Windham ran as a Republican in the 2002 primary election for Lake County Commissioner, losing to Hutchin. After Democratic candidate Pat Erickson was forced to withdraw from the race, Windham switched parties and expressed her wish to replace Erickson and to run as a Democrat against Hutchin in the general election. The Lake County Democratic Central Committee selected Windham to be the replacement Democratic candidate. Hutchin won the general election by 38 votes. At Windham’s request a recount was held; and the recount affirmed Hutchin won the election.

20. In the months leading up to the general election, Windham visited the courthouse on a number of occasions and spoke with both Young and Ladner. Ladner stated she always used her break times to talk with Windham. Ladner recalled the conversations with Windham were typically “one-sided,” with Windham doing most of

the talking. According to Ladner, Windham would be excited about an endorsement she had received, and she would stop by the courthouse and tell Young and Ladner about the endorsement.

21. Windham stated when she made trips to the courthouse it was for legitimate business purposes and not to discuss political matters. She stated she did not have multiple conversations with either Young or Ladner, and she never discussed political matters with them at the courthouse.

22. Josh King is President of the Lake County Republican Central Committee. King submitted a letter to the Commissioner's office stating he and Young had spoken by telephone on several occasions, with Young participating from his office telephone at the Appraisal Office. King's letter states King initiated some of the calls while Young initiated others. The letter states the conversations sometimes lasted 15 to 20 minutes but does not describe the content of the conversations. When interviewed, King stated the conversations involved organizing a candidates' debate or forum, to be established as a joint venture between the Democrats and Republicans. King stated after he raised with Young the issue of the propriety of Young discussing these matters using his office telephone, Young stopped calling from his office telephone. King stated that Young subsequently made several calls from a pay phone, and the remainder of the calls to discuss organization of the forum were from Young's home telephone to King's home telephone. King stated the majority of the telephone calls between them were made from their home telephones, and he believes that Young "is good about following the rules of politics."

23. Young admits he engaged in some telephone conversations with King from his office telephone, but denies any conversation lasted 15 to 20 minutes. Young stated he cannot recall the exact number of times he spoke with King from his office telephone, but he does not believe he did so “several” times as King contends. He recalls explaining to King during two of the telephone conversations that he could not discuss organization of the candidates’ forum during work hours or at the courthouse. Young recalls engaging in several of the telephone conversations with King from his home telephone, and at least one conversation from a pay telephone (which may have been in the courthouse). Young contends he called King once or twice from the courthouse while on his break, but only to arrange a meeting with King after work to discuss the candidates’ forum.

24. Sandy Weaver, Deputy Lake County Treasurer, submitted two letters to the Commissioner’s office regarding the allegations in the complaint. In her letters, she states that on several occasions she observed Young, Ladner, and Windham engaged in lengthy political discussions in the Lake County Courthouse, during work hours. Weaver’s letters did not include any details of the conversations. When interviewed she stated the conversations seemed to be “private” and involved either business or politics. Weaver was unable to recall any details of the conversations she overheard.

25. Patti Kugler is an employee of the Lake County Real Estate Tax Department located in the Lake County Courthouse. Her office is on the same floor as the Appraisal Office, separated by several other offices. Kugler recalled seeing Young, Ladner, and Windham engaged in conversations at various locations on the second

floor of the courthouse. Kugler either did not hear or was unable to recall any of the details of the conversations.

26. Lori Kelly is an employee of the Lake County Real Estate Tax Department and the Lake County Motor Vehicle Office. Kelly stated she observed Young, Ladner, and Windham engaged in conversations on the bench outside the Appraisal Office. She noted the conversations occurred several times a day during election week, and the participants typically were whispering. Kelly estimated the conversations lasted between 45 minutes and one hour. She was unable to overhear the details of the conversations.

27. Carol McClure is an employee of the Appraisal Office. McClure stated she observed Young and Ladner planning meetings and dinners on their office telephones; however, she did not know the purpose of the meetings or dinners. McClure also observed Young and Ladner engaged in conversations wherein they expressed their political opinions. According to her, the conversations sometimes lasted between one-half hour and one hour; however, McClure, was unable to recall the details of the conversations.

28. Theresa Kjvorstad is an employee in the Appraisal Office. She worked across the hall from Young and Ladner. Kjvorstad stated she observed Young and Joey Jayne in a conversation on one occasion, but she did not hear the conversation.

29. Patti Kugler identified Lynn Fricker as a possible witness to Young and Ladner's conversations. Fricker is the Lake County Deputy Clerk of Court and works on the third floor of the Lake County Courthouse. Each day Fricker walks by the Appraisal Office on her way to take money to the County Treasurer's Office. Fricker claims she

once saw Young talking with an unidentified person and heard Young say, “We have to find someone to run for office.” Fricker did not recall any other details of the conversation. Young does not recall making the statement.

30. Carla Buys is a former employee of the Appraisal Office. Buys believes there is no basis to the complaints filed by Hutchin. Buys stated that virtually everyone in the Lake County Courthouse discussed politics at one time or another, including Hutchin. Buys stated she never observed or heard Young or Ladner planning political events or soliciting support for or opposition to candidates while on the job at the courthouse.

31. Jack Guns is a former Democratic candidate for State Representative. He stated he never went to the courthouse for the specific purpose of talking with Young or Ladner. If he spoke with them at all, it may have been just to mention an upcoming meeting date. Neither Young nor Ladner invited Guns to the courthouse to talk, and Guns never heard Young or Ladner ask for support for a candidate or tell anyone to vote or not to vote for a particular candidate while working at their jobs.

32. Joey Jayne stated that, since she is a State Representative, she often goes to the Lake County Courthouse. She stopped by various offices in the courthouse to keep up-to-date on information that she, as a legislator, needed to know. She sometimes stopped by the Appraisal Office to talk with Young and Ladner about legislative matters. They occasionally discussed political matters such as current political events. Their conversations typically lasted several minutes, and they never tried to hide their discussions. Jayne never heard Young or Ladner urge anyone to vote

a particular way or for or against any particular candidate while on the job at the courthouse.

33. Larry Richards is a former employee of the Appraisal Office. Since April 1, 2002, Richards has been working at the Department of Revenue field office in Billings. Richards stated he worked across the hall from Young and Ladner, and he observed them engaged in conversations with Jack Guns on several occasions. While his impression was that the conversations involved general political matters, he did not recall the specifics of the conversations. Richards stated both Young and Ladner are very vocal about their political opinions.

34. Jody Richards is a former employee of the Appraisal Office. Since July 1, 2002, she has been working at the Department of Revenue field office in Billings. Richards stated she observed Young and Ladner engaged in “political discussions,” but she noted their conversations were no different from the conversations of anyone else in the courthouse. She stated she never heard or observed Young or Ladner campaigning, urging people to vote a certain way, or planning political events while on the job at the courthouse.

#### STATEMENT OF FINDINGS

Young and Ladner are accused of violating Montana Code Annotated § 13-35-224(4), which provides:

A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to express personal political views.

Montana Code Annotated § 2-2-121, referenced in the statutory subsection quoted above, prohibits, with limited exceptions, a public officer or public employee from using public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to a political committee, the nomination or election of any person to public office, or the passage of a ballot issue. Montana Code Annotated § 2-2-121(3)(a).

Montana Code Annotated § 13-35-226(4) recognizes a public employee's First Amendment right to express personal political views at work. A public employee can indicate his or her personal preference for a candidate, a ballot issue, or a political committee so long as the expression of personal political views is not solicitation. If a public employee, however, engages in acts or expression that amount to solicitation of support for or opposition to a candidate, ballot issue, or political committee, such conduct is prohibited by the statute. For example, a public employee's statement that she personally supports candidate X or that a particular ballot issue sounds like a good idea is a permissible expression of personal political views. On the other hand, as noted, acts or words by a public employee that amount to solicitation are prohibited by the statute.

The terms "solicit" and "solicitation" are not defined in Montana's laws governing campaign finance and practices. The term "solicit" typically means to make petition to; to entreat; to approach with a request or plea; or to urge strongly. (Merriam-Webster Online Dictionary, c. 2003). Although applied in an obviously different context, the term "solicit" is defined somewhat similarly, for purposes of Montana's criminal statutes, as "to command, authorize, urge, incite, request, or advise" someone to commit an offense. Montana Code Annotated § 45-2-101(68). Thus, using public time or facilities

to urge someone to vote for or against candidate X, to raise money for candidate X, to conduct a poll or survey for use in candidate X's campaign, or to do work on candidate X's campaign are examples of impermissible solicitation of support or opposition prohibited by Montana Code Annotated § 13-35-226(4).

Applying these principles and the generally accepted definition of the term "solicit," the evidence in this case does not clearly support a conclusion that Young or Ladner were actively engaged in solicitation of support for or opposition to a candidate or candidates while on the job or at their place of employment.

Based on the statements of various witnesses, Young and Ladner appear to have spent at least some time while on the job and at their place of employment engaged in various "political" discussions and conversations. There is, however, insufficient credible evidence that their "political" discussions crossed the line into prohibited words or acts amounting to "solicitation" of support for or opposition to candidates. The following factors are central to this determination:

1. Young and Ladner, in their written responses to the complaints and when interviewed during the investigation, both steadfastly maintained that while on the job at the courthouse they never engaged in any conversations or acts that could be construed as solicitation of support for or opposition to candidates. Both state that, while on the job, they never attempted to influence anyone's vote in any political races or campaigns and never engaged in any other acts, such as distribution of campaign materials, that would be prohibited by Montana Code Annotated § 13-35-226(4). See Facts 9, 11, and 12.

2. Several other witnesses support Young and Ladner's contentions, noting that they never observed or heard Young or Ladner soliciting support for or opposition to candidates or engaging in any other speech or acts that could be construed as activities prohibited by the statute. See Fact 30 (Carla Buys), Fact 31 (Jack Guns), Fact 32 (Joey Jayne), and Fact 34 (Jody Richards).

3. A number of witnesses who claimed to have overheard Young and/or Ladner engaged in "political" discussions or conversations either did not actually hear or could not recall the details of most of the discussions or conversations. See Fact 8 (Mike Hutchin), Fact 13 (Patricia Cook), Fact 24 (Sandy Weaver), Fact 25 (Patti Kugler), Fact 26 (Lori Kelly), and Fact 28 (Theresa Kjvorstad).

Three of the alleged incidents discussed by witnesses merit further discussion:

1. Patricia Cook claims that around 8:15 one morning in the courthouse she heard Ladner tell Mike Roberts he would need to check with Young after Young returned from vacation regarding Roberts "getting the appointment" as the Democratic candidate for county commissioner, after candidate Pat Erickson withdrew from the race (Fact 14). Roberts stated he doubts he would have been in the courthouse that early, although he recalls giving Ladner a copy of a letter he wrote to the Secretary of State and the Attorney General regarding a replacement candidate. Roberts noted Ladner did not read the letter when he gave it to her, but he stated he may have summarized its contents to Ladner during their brief meeting. (Fact 16). Ladner claims she has no recollection of Roberts giving her a copy of the letter, and she, in fact, does not recall ever engaging in any conversations with Roberts. (Fact 18). I find that the evidence on this question is conflicting and inconclusive, and is therefore insufficient to prove that

Ladner made the statement or even engaged in the alleged conversation. Moreover, as noted in Fact 15, the Secretary of State's office ultimately determined it would not become involved in determining the replacement candidate for Erickson. The evidence is therefore insufficient to prove a violation of Montana Code Annotated § 13-35-226(4).

2. Lynn Fricker claims she overheard Young state to an unidentified person, "We have to find someone to run for office." Young stated he cannot recall making the statement. (Fact 29). Aside from the lack of detail, the alleged statement is noteworthy because it does not refer to a specific, identifiable candidate. Rather, the statement suggests a desire to find someone who would be a viable candidate and who would be willing to run for office. The other participant in the alleged conversation has not been identified and, as noted, Young states he does not recall making the statement. For these reasons the alleged statement, standing alone, is insufficient to prove a violation of Montana Code Annotated § 13-35-226(4).

3. Young admitted to some telephone conversations with Josh King, from Young's office telephone, during which they discussed organization of a joint Democratic and Republican candidates' forum. (Facts 22 and 23). Unquestionably that type of discussion by a public employee during work hours, using an office telephone, appears to be an inappropriate use of public time and resources. The activity does not, however, constitute a violation of the provisions of Montana Code Annotated § 13-35-226(4), which prohibits solicitation of support for or opposition to the *nomination or election of any person to public office*. Discussion of the logistics of organization of a joint candidates' forum, with the president of an opposing party's county central

committee, does not amount to solicitation of support for or opposition to a particular candidate or candidates, and is therefore not an activity that is prohibited by the statute.

#### CONCLUSION

The evidence establishes that Young and Ladner engaged in at least some discussions regarding “political” matters during work hours. There is, however, no reliable, probative evidence that Young and Ladner’s discussions amounted to acts or expressions prohibited by Montana Code Annotated § 13-35-226(4).

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to justify a civil prosecution based on allegations that Kim Young and Jackie Ladner violated Montana campaign practices law.

Dated this \_\_\_\_\_ day of October, 2003.

---

Linda L. Vaughey  
Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14<sup>th</sup> day of October, 2003, the foregoing Decision of the Commissioner was served on the parties hereto, addressed to the parties as follows:

Certified U.S. Mail, Postage Prepaid  
Kim Young  
776 Kerr Dam Road  
Polson, MT 59860

Certified U.S. Mail, Postage Prepaid  
Jackie Ladner  
424 North Finley Point  
Polson, MT 59860

Certified U. S. Mail, Postage Prepaid  
Mike Hutchin  
3111 Flathead View Drive  
Polson, MT 59860

---

Dulcy L. Hubbert  
Program Supervisor  
Commissioner of Political Practices